FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1982-5

of

COMMISSIONER THOMAS E. HARRIS

I dissent from the majority opinion in this matter for reasons previously stated in Advisory Opinions 1978-10 and 1978-46.

Congress has forbidden corporations and unions to make contributions or expenditures in connection with Federal elections, with certain exceptions not here applicable. 441b. Congress has not, however, barred corporation or union money from state elections, again with certain exceptions. The tension between these two policies stems from the fact that almost any corporate or union contributions in connection with state elections will have beneficial side effects in Federal elections.

Certainly corporations and unions may give directly to state candidates or their committees (state law permitting), but even there may be some effect on Federal elections. The impact is clearer when corporations and unions are allowed to contribute to political parties, since contributions to political parties for state candidates will free individual contributions for use in the Federal campaigns. Perhaps the clearest example is contributions to party committees for get-out-the-vote drives. Not only do such contributions free individual contributions for Federal campaigns, but get-out-the-vote drives directly impact on Federal elections in those states which have simultaneous Federal and state elections, as nearly all do. In Re: AOR 1976-72, involving the Illinois Republican State Committee, the Commission adopted a reasonable compromise which allowed use of corporate or union money for an allocable portion of general party overhead and operating expenditures between Federal and non-Federal activity, but barred any use for get-out-the-vote drives. Unfortunately, the Commission subsequently abandoned this compromise in favor of allowing an allocable portion of corporate money even in get-out-the-vote drives. As is too frequently the case, the Commission proffered no explanation for this about-face.

Corporate contributions for get-out-the-vote drives are not sanctioned either by the statute or by Commission regulations. The only relevant regulation is 11 CFR Section 106.1(e), which allows administrative expenses by party committees to be allocated on a reasonable basis between their Federal and non-Federal accounts.

Quite clearly, these administrative expenses are meant to encompass rent, utilities, office supplies, salaries, etc. and not campaign expenses. The use of corporate or union money even for administrative expenses is in my view not legally justifiable in the case of a national party whose primary concern is the election of Federal candidates.

The Commission's unwarranted, but customary, permissiveness has now brought it to the point where a national party, which is holding a national conference to rev up for the 1982 congressional and 1984 presidential elections, is asking sanction to use corporate and union subsidies under the pretense that the conference will primarily benefit state and local election campaigns.

The majority opinion opens a loophole in Section 441b which invites corporations and unions to buy influence with the national parties. Worse, three of the Commissioners would go far beyond the advisory opinion request and allow the complete underwriting of the national conference by corporations and unions. It is hard to conceive a more blatant disregard of the letter and intent of 441b.